

**WAUKESHA COUNTY BOARD OF ADJUSTMENT  
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, July 27, 2005, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** James Ward, Chairman  
Robert Bartholomew  
Paul Schultz  
Walter Tarmann  
Walter Schmidt

**BOARD MEMBERS ABSENT:** None

**SECRETARY TO THE BOARD:** Peggy S. Pelikan

**OTHERS PRESENT:** Town of Merton Board of Adjustment  
Chris & Dani Dix, BA05:016, representatives of petitioner  
John Mehan, BA05:016, neighbor  
Dennis & Becky Lutynski, BA05:051, petitioners  
Tom Vavra, BA05:051, designer  
Diane Heywood, BA05:016, neighbor  
Marty & Donna Kmiec, BA05:050, petitioner  
Mark Stirmel, BA05:046, petitioner  
Chris Jenk, BA05:052, petitioner's architect  
Diane Hecker, observing  
Wayne Slawson, BA05:053, petitioner  
Bernard Krauska, BA05:054, petitioner  
Bill Groskopf, BA05:052, petitioner's builder  
Keith Jacobs, BA05:054, neighbor  
Jim & Linda Schneider, BA05:016, neighbor  
Mitch Kohls, BA05:016, neighbor  
Charles Reuben, BA05:052, owner  
Julie Sullivan, BA05:050, petitioner's engineer

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

**SUMMARIES OF PREVIOUS MEETINGS:**

Mr. Bartholomew                      *I make a motion to approve the Summary of the Meeting of July 13, 2005.*

The motion was seconded by Mr. Tarmann and carried unanimously.

**NEW BUSINESS:**

**BA05:046 MARK STIRMEL**

Mr. Tarmann

*I make a motion to approve the request in accordance with the staff's recommendation, as stated in Staff Report, with the conditions recommended in the Staff Report.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The existing shed and poly-structure must be removed within six months of issuance of the Zoning Permit for the proposed garage. Once these structures are removed, the property owner shall notify Planning & Zoning Division staff so that a site inspection can be performed.
2. The total accessory building floor area on the property must not exceed a total of 484 sq. ft. This will provide an accessory building floor area ratio of 4.2 % and approximately 10,260 sq. ft. of open space on the property.
3. The garage must be located a minimum of 40 ft. from the established right-of-way, 16.6 ft. from all lot lines and 10 ft. from the residence, as proposed.
4. The garage must contain only one story and it must conform with the height requirements of the Ordinance, i.e. the maximum height of the garage, as measured from the lowest point of the structure to the highest point of the roof, must not exceed 18 ft. The proposed garage may contain an upper-level storage area and/or a basement level only if the garage conforms to the height requirement noted above, and only if the upper level is only accessed ONLY via pull-down stairs.
5. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
6. Due to the existing slopes on the property, in order to ensure the construction of the detached garage does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property, and not to the neighboring properties or the road.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of the request to construct a detached garage, with the recommended conditions, will allow a reasonable use of the property that is not unnecessarily burdensome. A hardship exists due to the total size of the lot and location of the existing residence. Without the granting of a road setback variance, a variance from either the required separation distance between accessory and principal structures or offset provisions would be required. This is due to the fact that if the garage is moved any further back, it will be too close to the house. It also cannot be moved any closer to the north lot line without the need for an offset variance. It would be impossible to provide for a reasonably sized garage on the property without the granting of a variance. In addition, the garage will be located at least 60 ft. from the platted right-of-way; therefore, it is felt by Waukesha County staff that a road setback variance, as recommended, will not interfere with the public's use of the road or be a safety hazard. Conformance with the open space requirement of 15,000 sq. ft. is impossible because the lot is only 11,523 sq. ft. in size (excluding the established right-of-way) whereas the minimum required lot size is 20,000 sq. ft. In addition, the required accessory building floor area ratio would only allow for a 346 sq. ft. garage. Therefore, some relief from the open space requirement and accessory building floor area ratio should be provided. The removal of the two non-conforming structures along with construction of the recommended detached garage would then result in 10,260 sq. ft. of open space on the property and an accessory building floor area ratio of 4.2%. Variances should be granted only to provide the minimum relief necessary for a reasonable use of the property. It is felt by the Waukesha County Staff that construction of the recommended 484 sq. ft. garage with removal of the two non-conforming structures would provide that relief. In addition, if the home were to be brought into conformance with the minimum floor area requirements (1,100 sq. ft.) at some point in the future, the property would still be within the allowable 15% total floor area ratio. As recommended, a total accessory building floor area of 484 sq. ft. (not including any basement level or upper level storage area) provides a reasonable use of the property, is not unnecessarily burdensome, will result in the removal of two non-conforming structures from the property and will permit the construction of a detached garage that will be appropriately sized for the lot, not detrimental to the surrounding neighborhood or contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

#### **BA05:050 MARJAN & DONNA KMIEC**

Mr. Schmidt

*I make a motion to approve the request for a Special Exception rather than a variance from the shore and floodplain setback requirements of the Ordinance in accordance with the staff's recommendation, as stated in Staff Report, with the following modification to condition No. 1:*

*Condition No. 1 shall read as follows: "The size of the deck/porch shall not exceed 5 ft. in radius from the center of the door, as proposed."*

The motion was seconded by Mr. Tarmann and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The size of the deck/porch shall not exceed 36 inches by 36 inches in size.
2. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing the staked-out location of the proposed porch/deck, in conformance with the above condition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
3. A detailed cost estimate of the deck/porch must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
4. A Zoning Permit must be issued for both the after-the-fact interior improvements to the property and for the porch/deck, prior to the construction of the porch/deck.
5. The Town of Mukwonago Board of Adjustment must approve this request, and documentation of such approval shall be submitted to the Planning and Zoning Division Staff prior to the issuance of a Zoning Permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, as conditioned, will provide the petitioners with the minimum amount of relief necessary from the shore and floodplain setback requirement of the Ordinance to abate a known safety hazard and will limit the impact on the lake and floodplain. The approval of this request would not be contrary to the public interest. Therefore, the approval of this request is within the purpose and intent of the Ordinance.

#### **BA05:051 DENNIS & BECKY LUTYNSKI**

Mr. Schultz

*I make a motion to deny the request for a variance from the road setback, offset between a principal building and an accessory building, and floor area ratio requirements of the Ordinance but approve the request for a variance from the commercial kennel offset requirements of the Ordinance, for the reasons as stated in the Staff Report and with the following modifications to the conditions recommended in the Staff Report:*

*Condition No. 7 shall be added to read, "The maximum floor area ratio on the property shall not exceed 10%."*

The motion was seconded by Mr. Schmidt and passed with four yes votes. Mr. Ward voted no.

The staff's recommendation was for **denial** of the request for a variance from the road setback, and offset between a principal building and an accessory building requirements of the Ordinance and **approval** of the request for variances from the floor area ratio, and the commercial kennel offset requirements of the Ordinance, with the following conditions:

1. Both the Town of Ottawa Plan Commission and Waukesha County must approve a revised Site Plan/Plan of Operation or a revised Conditional Use and Site Plan/Plan of Operation prior to the issuance of a Zoning Permit.
2. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
3. The proposed buildings must be located at least 30 ft. from the side lot lines and 50 ft. from the base setback line of S.T.H. 67, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset and setback requirements.
4. Prior to the issuance of a Zoning Permit, a complete set of building plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
5. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed buildings, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
6. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed buildings does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variances from the road setback and offset between a principal building and an accessory building would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The proposed building could be moved or redesigned so that it adheres to the road setback requirements of the Ordinance. In addition, the sheds are not

necessary for the operation of the business, however, if the petitioner would like to keep them on the property they could be relocated to adhere to the offset requirements of the Ordinance.

Adhering the strict letter of the offset requirements of the Ordinance would only allow an area on the property approximately 7,780 sq. ft. in size that could be used for the operation of the commercial kennel. The property is completely surrounded by the Kettle Moraine State Forest and therefore any noise generated by the operation being closer than 100 ft. from the property lines would not impact any residential areas.

This property has been used as a commercial kennel since 1960. There are tree lines bordering both sides of the property that do not front on S.T.H. 67, which will screen the proposed building from view from neighboring properties. The approval of this request would not be contrary to the public interest. Therefore, the approval of this request is within the purpose and intent of the Ordinance.

**BA05:052 CHARLES REUBEN**  
**William Groskopf – Petitioner**

Mr. Schmidt

*I make a motion to deny the request for variances from the shore and floodplain setback requirements of the Ordinance for the following reasons:*

*For the reasons set forth in the letter from the Wisconsin Department of Natural Resources dated July 27, 2005. Furthermore, it has not been demonstrated, as required for a variance, that denial of the requested variances from the shore and floodplain setback requirements would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.*

The motion was seconded by Mr. Tarmann and carried unanimously.

**BA05:053 SLAWSON ENTERPRISES LLC**  
**Wayne & Donna Slawson - Petitioners**

Mr. Bartholomew

*I make a motion to deny the request for a variance from the road setback requirements of the Ordinance but approve the request for variances from the height, and mixed-use business park district sign requirements of the Ordinance in accordance with the staff's recommendation, as stated in Staff Report, with the following modification to the conditions recommended in the Staff Report:*

*Condition No. 5 shall read as follows, “The sign face of the sign located at the entrance of the property to National Ave. shall not exceed 32 sq. ft. in size.”*

The motion was seconded by Mr. Schultz and carried unanimously.

The staff’s recommendation was for **denial** of the request for a variance from the road setback requirements of the Ordinance and **approval** of the request for variances from the height, and mixed-use business park district sign requirements of the Ordinance, with the following conditions:

1. Conditional Use and Site Plan/Plan of Operation Permits must be approved and issued prior to the issuance of a Zoning Permit for the proposed signs.
2. A Zoning Permit must be issued prior to construction of the proposed signs.
3. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify, if applicable, that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
4. Both of the proposed signs must be located at least 20 ft. from the base setback line of the roads.
5. The sign face of the sign located at the entrance to the property on National Ave. shall not exceed 30 sq. ft. in size.
6. Prior to the issuance of a Zoning Permit, a revised set of plans for the signs in conformance with the above conditions must be submitted to the Planning and Zoning Division staff for review and approval.
7. Prior to the issuance of a Zoning Permit, an updated Plat of Survey showing all existing structures and the staked-out location of the proposed signs, in conformance with the above condition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The proposed sign along I-43 can be moved an additional 5 ft. from the right-of-way to meet the road setback requirements. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested road setback variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

In order to allow the sign along I-43 to be visible to travelers on the interstate, the proposed

freestanding sign will need to be slightly taller than is allowed in the Ordinance. Furthermore, due to the high travel speeds on I-43, the larger sign size is reasonable; the sign would be comparable in size to the signs located near the intersection of the Hwy 164 and I-43. The sign to be located at the entrance of the property on National Ave. is only 2 sq. ft. larger than the maximum sign size requirements of the Ordinance; therefore, it can be reduced to meet the size requirements of the Ordinance and still serve its purpose. Because the property has frontage on two major roadways, it is reasonable to allow the property to have two freestanding signs whereas otherwise only one freestanding sign would be allowed. The approval of this request would not be contrary to the public interest. Therefore, the approval of this request is within the purpose and intent of the Ordinance.

**BA05:054 BERNARD & MICHELLE KRAUSKA**

Mr. Schultz

*I make a motion to approve the request for variances from the road setback, and offset requirements of the Ordinance subject to the following conditions:*

- 1. The attached garage addition shall not exceed 12 ft. (wide) by 24.6 ft. (deep) in size.*
- 2. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.*
- 3. Prior to the issuance of a zoning permit, a complete set of building plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.*
- 4. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed garage addition, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.*
- 5. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed garage addition does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties*



*or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.*

6. *A Declaration of Restrictions shall be prepared by the Planning and Zoning Division staff, stating that the existing shed on the property may remain in its current location until such time that the current owner wishes to sell the property. At that time, the overhang on the shed must be removed, or the shed must be relocated to a conforming location and a Zoning Permit issued by the Planning and Zoning Division staff. Prior to the issuance of a zoning permit for the proposed garage addition, the Declaration of Restrictions must be signed by the owner, notarized, and recorded in the Waukesha County Register of Deed's office, and a copy furnished to the Planning and Zoning Division staff.*

*The reasons for this decision are as follows:*

*The angle of the house and the location of the septic system in the rear of the house make it difficult to add on to the existing residence in a conforming location. The petitioner's may be able to construct a detached garage in the front of the home; however this would not be aesthetically pleasing to the neighborhood.*

The motion was seconded by Mr. Bartholomew and carried with four yes votes. Mr. Tarmann voted no.

#### **BA05:016 NORTH LAKE YACHT CLUB**

Mr. Tarmann

*I make a motion to approve the request in accordance with the staff's recommendation, as stated in Staff Report, with the following modifications to the conditions recommended in the Staff Report and the reasons for the recommendation:*

*Condition No. 10 shall be added to read, "All stormwater must be retained on the property and not directed to any wetlands or the lake. Adequate plans must be submitted to the Planning and Zoning Division staff for review and approval prior to the issuance of a Zoning Permit for the proposed building.*

*Condition No. 11 shall be added to read, "The proposed building shall not exceed 4200 sq. ft. in size and the existing shed must be removed from the property prior to the issuance of a Zoning Permit."*

*The following shall be added to the reasons, “Furthermore, the approval of this request will benefit the public by providing a sailing school for the education of children and families who do not live on the lake.”*

The motion was seconded by Mr. Schultz and carried unanimously.

The staff’s recommendation was for approval, with the following conditions:

1. The proposed rezoning of a portion of the property must be approved and the change be published prior to the issuance of a Zoning Permit for the proposed building.
2. The Conditional Use must be approved and a Permit issued prior to the issuance of a Zoning Permit for the proposed building.
3. A Sanitary Permit for a new waste disposal system, if applicable, must be issued and a copy furnished to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
4. Prior to the issuance of a Zoning Permit, a complete set of revised building plans must be submitted to the Planning and Zoning Division staff for review and approval.
5. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed building, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
6. The elevation of the proposed building must be placed at a minimum of two ft. above the 100-year floodplain elevation. Said elevation shall be noted on the survey required in Condition No. 5.
7. In order to ensure the construction of the new building does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that any area be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the plat of survey required in Condition No. 5.
8. No portion of the wetland areas on the property shall be disturbed and no vegetation shall be removed from those areas.

9. Proper erosion control measures shall be installed and maintained throughout construction and until the site is stabilized.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, as conditioned, will allow the petitioners reasonable use of the property while limiting the environmental impact on the site. The existing wetlands will remain undisturbed.

Only that portion of the site where the building will sit will be filled, the remainder of the property will remain at its current elevation, minimizing the impact on the flood storage capacity. The property has been used by the North Lake Yacht Club for many years and the approval this request will allow them to continue to use the property. The approval of this request would not be contrary to the public interest. Therefore, the approval of this request is within the purpose and intent of the Ordinance.

#### **OTHER ITEMS REQUIRING BOARD ACTION:**

#### **ADJOURNMENT:**

Mr. Bartholomew

*I make a motion to adjourn this meeting at 9:40 p.m.*

The motion was seconded by Mr. Schultz and carried unanimously.

Respectfully submitted,

Peggy S. Pelikan  
Secretary, Board of Adjustment